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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,863	09/23/2003	Eric Schiller	P-6106	3151
26253	7590	07/03/2006	EXAMINER	
DAVID W. HIGHET, VP AND CHIEF IP COUNSEL BECTON, DICKINSON AND COMPANY 1 BECTON DRIVE, MC 110 FRANKLIN LAKES, NJ 07417-1880			HAN, MARK K	
			ART UNIT	PAPER NUMBER
			3767	

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/668,863

Applicant(s)

SCHILLER ET AL.

Examiner

Mark K. Han

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 6-14 is/are rejected.
- 7) ☒ Claim(s) 2-5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: It is the Examiner's position that Applicant has evoked 35 U.S.C. 112, 6th paragraph, means-plus-function language to define Applicant's invention. Therefore, the Examiner requires the Applicant to amend the specification pursuant to 37 CFR 1.75(d) and MPEP 608.01(o) to explicitly state, with reference to the terms and phrases of the claim element, what structure, materials and acts perform the function recited in the claim element. Please note that the MPEP clearly states, "Even if the disclosure implicitly sets for the structure, materials, or acts corresponding to the means- (or step-) plus-function claim element in compliance with 35 U.S.C. 11, 1st and 2nd paragraphs, the PTO may still require the applicant to amend the specification pursuant to 37 CFR 1.75(d) and MPEP 608.01(o)..." (Also see MPEP 2181 [Rev. 1, February 2000])

Appropriate correction is required.

Claim Objections

2. Claims 1, 13 and 14 are objected to because of the following informalities: It is the Examiner's position that Applicant has evoked 35 U.S.C. 112, 6th paragraph, means-plus-function language to define Applicant's invention. Therefore, the Examiner has objected to the claims for the reasons set forth above in the objection to the specification.

Appropriate correction is required.

Double Patenting

3. Claims 1 and 6-14 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 6-9, 11, 12, 18 and 19 of copending Application No. 10/530,831. Although the conflicting claims are not identical, they are not patentably distinct from each other because the differences in the claim language are insubstantial.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 6, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,120,314 to Greenwood.

Greenwood discloses a syringe assembly having a barrel 11, an elongate tip 21, a plunger 30, a stopper 40 and anti-reflux means 50. See Figures 1-3. It is the Examiner's position that when the stopper 40 becomes locked by the anti-reflux means 50, the anti-reflux means controls the stopper from deflecting any further by preventing movement of the stopper once it is fully compressed. See col. 5, lines 31-48.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 8 rejected under 35 U.S.C. 103(a) as being unpatentable over Greenwood.

Greenwood meets the claimed limitations as disclosed above but fails to include the use of a saline or heparin lock. However, saline is a well-known flush agent for introduction into the body. One skilled in the art, at the time the invention was made, would have found obvious to incorporate saline into the invention of Greenwood, based on this common knowledge in the art.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Greenwood in view of U.S. Patent No. 6,361,524 to Odell et al. (hereinafter "Odell").

Greenwood discloses the claimed limitations as described above but does not disclose a tip cap. Odell teaches a cap for maintaining the sterility of the syringe contents before use and during transport. It would have been obvious to one of ordinary skill in the art to incorporate the cap into the invention of Greenwood in order to maintain the sterility of the contents of the syringe prior to use thereby enhancing the safety of the patient from infection.

7. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,135,489 to Jepson et al. (hereinafter "Jepson") in view of Greenwood.

Jepson discloses the claimed method of flushing a catheter. See col. 7, line 46 through col. 9, line 36. Jepson, however, does not disclose the syringe having anti-reflux means.

Greenwood discloses such a syringe as shown above. It would have been obvious to one of

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ordinary skill in the art to modify the invention of Jepson by including the syringe of Greenwood in order to maintain a positive pressure in the IV line by preventing the stopper from drawing back after injection.

Allowable Subject Matter

8. Claims 2-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments, see p. 8, line 22 through p. 10, line 2, filed 15 March 2006, with respect to claims 2-5 have been fully considered and are persuasive. The rejection under 35 U.S.C. §103(a) of claims 2-5 has been withdrawn.

10. Applicant's arguments with respect to claims 1, 6-10, 13 and 14 have been considered but are moot in view of the new ground(s) of rejection.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark K. Han whose telephone number is 571-272-4958. The examiner can normally be reached on Monday to Friday, 9 am to 5:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Mark K. Han
Patent Examiner
Art Unit 3767

mkh
June 25, 2006

KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER

